

Project License Agreement

THE CITY OF PITTSBURGH, Department of Parks and Recreation

Hereinafter referred to as "City,"

AND

The PITTSBURGH PARKS CONSERVANCY, INC.

Hereinafter referred to as the "PPC"

For Cliffside Park Project,

Hereinafter referred to as "Cliffside"

WITNESSETH:

Whereas, pursuant to Resolution No. 285 of 1998, approved May 29, 1998 and effective May 29, 1998, the City entered into a Cooperation Agreement (the "Cooperation Agreement"), dated April 10, 2000 and renewed and extended on December 11, 2011, with the PPC to establish an alliance to provide infrastructure improvements, special care, and restoration for the City's parks; and

Whereas, the PPC, consistent with the Cooperation Agreement, has obtained and set aside certain funds to improve park and recreational elements of Cliffside Park in the Hill District; and

Whereas, the City has received and approved PPC's plans for said improvements _to Cliffside Park, and

NOW, THEREFORE, in consideration of the mutual premises and intending to be legally bound hereby, the parties hereto agree as follows:

1. SCOPE OF IMPROVEMENTS & GRANT OF LICENSE: Subject to all terms and conditions set forth below and within the attached exhibits, PPC has agreed to undertake a rehabilitation and improvement project for Cliffside Park in the Hill District (the "Project Site"), which is further depicted in Exhibit A, which is attached hereto and incorporated herein. The PPC will perform certain specified work and provide certain materials in Cliffside Park (collectively the "Scope of Work") at its own cost and expense, as more fully described in Exhibit A.

CITY hereby grants to PPC, its agents, contractors, and subcontractors, a license to go upon the Project Site to perform the Cliffside Park Scope of Work. PPC is authorized to move and/or store its equipment, materials, and trailers on said Project Site and to use them as lay down and/or staging areas to facilitate Cliffside Park. Additional staging areas may be designated by the Department of Public Works as needed. The CITY shall be permitted to grant other licenses for the same Project Site during the term of this Project License Agreement (this "Agreement") so long as such other licenses are consistent with and do not interfere with the rights granted herein.

- A. All design plans/construction documents shall be subject to the prior approval of the City. The City's approval shall include a review and approval of plans and specifications by the City's Department of Public Works ("DPW"), and the Art Commission, as applicable. DPW shall approve or object to Project plans within sixty (60) days of receipt of complete plans and specifications. Any objections shall be provided in writing and provide detail sufficient for the PPC to respond to its concerns. PPC shall provide a copy of all As-Builts to City upon completion of the Project work, or parts thereof, as applicable. Additionally, during the completion of the Project, the City will be a participant in all construction-related job meetings and will receive a copy of all minutes from construction-related job meetings.
 - B. Upon completion of the Project, the PPC will notify the City in writing

of the completed work prior to accepting the contractor's work. Upon receipt of such notification, the City will inspect the contractor's completed Project work to ensure it was installed properly.

- C. Upon completing its inspection and absent any objection thereto or after any outstanding punch list items have been corrected in compliance with City requirements, the City will forward to PPC written approval of the Director of DPW to accept said work.
- D. In the event of an objection, the City will provide PPC with a written statement of the objection(s). Without ten (10) days of receiving such statement, PPC will prepare a written plan as to how such objections will be cured.
- E. PPC shall obtain warranties for Project Work (including equipment, fixtures, and materials) if available.
- 2. <u>TERM OF AGREEMENT:</u> The term of this Agreement shall commence on the date first written above and shall conclude on the later of (i) December 31, 2016, or (ii) two years from the completion date of the Cliffside Park Project. PPC will provide written notice to the City of the completion date for purposes of timing the two years of maintenance to be provided hereunder.
- 3. MONITORING AND EVALUATION; AUDITS: All services provided under this Agreement shall be subject to monitoring and evaluation by City or its authorized representatives. PPC shall supply City with written reports on Cliffside Park activity as City may, from time to time, require. Authorized representatives of City shall have access to the books and records maintained by PPC with respect to any services or materials provided to City pursuant to this Agreement at all reasonable times and for all reasonable purposes. All books and records pertaining to Cliffside Park shall be preserved by PPC for a

period of three (3) years after the termination of this Agreement.

- 4. WORKER'S COMPENSATION: PPC hereby certifies that it has accepted the provisions of the Worker's Compensation and Occupational Disease Acts, as amended and supplemented, insofar as the work covered by this Agreement is concerned, and that it has insured its liability there under in accordance with the terms of the said Acts, as evidenced by the certificate of insurance it has caused to be attached hereto, or that it has duly filed a proper certificate of exemption from insurance with the Pennsylvania Department of Labor and Industry.
- 5. COMPLIANCE WITH LAWS: PPC and any subcontractors hereunder shall fully obey and comply with all laws, ordinances, resolutions, and administrative regulations which are or should be applicable to any work performed under this Agreement. PPC and/or its subcontractors shall promptly notify the Department of any known vandalism or other illegal activities at the Project Site, which come to their attention. PPC is aware that the CITY has obligations under state and other applicable laws concerning public bidding and the payment of prevailing wages for certain projects. By entering into this Agreement, the City Solicitor is expressing no opinion as to whether PPC has or will be required to comply with any of these laws during performance of the Project/Scope of Work.
- 6. ANTI-DISCRIMINATION: PPC shall not discriminate in its employment on the basis of race, color, religion, ancestry, national origin, place of birth, sex, age, disability, non job-related handicap, or sexual orientation. PPC shall comply with the applicable provisions of the Pittsburgh Code, Title Six Conduct, Article V-Discrimination, and any amendments thereto. PPC shall also comply with the applicable provisions of Title I and Title II of the Americans with Disabilities Act, any amendments thereto and any regulations issued there under. PPC shall incorporate in any subcontracts which may be permitted

under the terms of this Agreement a requirement that said subcontractors also comply with the provisions of this Section.

7. INSURANCE: PPC and any prime contractor hired to perform Cliffside Project Work shall maintain insurance in the amount specified in this Section and shall keep the City as an additional insured on such policy throughout the term of this Agreement. Attached hereto as Exhibit "B" and incorporated herein is a certificate of insurance duly executed by officers or authorized representatives of a responsible and non-assessable insurance company, evidencing the following minimum coverages and specifically identifying City as an additional insured on all general liability policies, which insurance shall be noncancellable, except upon thirty (30) days prior written notice to City:

| General Liability | Individual Occurrence Aggregate | | | | |
|---------------------------------|---------------------------------|-------------|--|--|--|
| Bodily injury, including death | \$ 1,000,000 | \$2,000,000 | | | |
| Real & Personal Property damage | \$ 1,000,000 | \$2,000,000 | | | |
| Worker's Compensation | Statutory L | imits | | | |

Automobile insurance in the same amounts, and subject to the same terms as general liability insurance, as listed above is also required for PPC's prime contractor. All premiums shall be at the expense of PPC and, if applicable, its prime contractor. All policies must be made on an occurrence basis. Claimsmade policies are not acceptable. In the event that the term of said insurance shall expire prior to the expiration of the term of this Agreement or the

completion of all services required hereunder, whichever shall occur later, PPC shall renew said

insurance in a timely manner and shall promptly cause a certificate of insurance evidencing such renewal, and also identifying City as an additional insured, to be forwarded to the Director of the Department of Public Works.

- 8. **GOVERNING LAW:** This Agreement shall, in all respects, be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.
- 9. AMENDMENT AND TERMINATION: This Agreement contains all terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto; provided, however, that the parties do contemplate entering into a separate agreement regarding the long-term maintenance of Cliffside Park. This Agreement may not be changed, modified, discharged or extended except by prior written amendment, duly executed by the parties. Either party may terminate this Agreement upon thirty (30) days prior written notice.
- 10. <u>PITTSBURGH HOME RULE CHARTER:</u> This agreement is subject to the provisions of the Pittsburgh Home Rule Charter.
- 11. STORAGE: PPC and/or its subcontractors may store equipment at the Project Site if approved ahead of time by the Director of the Department of Public Works. Access to the Project Site for storage purposes shall be limited to authorized representatives or designees of the PPC or its subcontractors. PPC shall secure appropriate security for any machinery and/or materials used for Cliffside Park and agrees that the City shall not be liable for any damages to or loss of its property or property of its subcontractors for any reason.
- 12. OWNERSHIP OF IMPROVEMENTS: Ownership of all alterations, additions or capital improvements constructed and paid for by PPC at the Project Site shall vest in City upon installation, without compensation being paid therefore.

- 13. ASSIGNMENT; SUBCONTRACTING: PPC shall not assign this Agreement without the written consent of CITY.
- 14. <u>PROHIBITION AGAINST ENCUMBERANCES:</u> PPC will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge which might become a lien, encumbrance or charge upon the Site or any part thereof having any priority or preference over or ranking on a parity with the estate, rights and interest of City in the Project Site or any part thereof.
- 15. WAIVER OF MECHANIC'S LIENS: PPC shall not cause or permit any work to be done upon or any materials or services furnished to any portion of the Project Site in connection with the improvement, alteration or repair thereof, except under a contract or contracts which effectively waive to the fullest extent permitted by law any right to file a mechanic's lien or claim against the Project Site or any part thereof.
- 16. **ZONING:** PPC shall be responsible for complying with all applicable zoning guidelines and laws relative to the Project Site. With the prior approval of the City, PPC shall file for approval of any zoning variances that may be required for the intended use of the Project Site.
- 17. <u>CONSENTS:</u> In any case under this Agreement, when the prior written approval or consent of City shall have been requested by PPC, such approval or consent shall not be unreasonably withheld or delayed by City.
- 18. APPROVALS FOR REHABILITATIONS: PPC shall accomplish the rehabilitation and improvements of Cliffside Park in accordance with the scope of work described on Exhibit "B" hereto as previously approved by the City. Cliffside Park shall be accomplished in accordance with applicable laws. Any alteration in plans previously approved by City must be submitted in writing to the City's Department of Public Works prior to such planned amendments. Any objections by the Director of Public Works shall be timely provided in writing and provide detail sufficient for the PPC to respond to its concerns.

- 19. INDEMNITY: PPC hereby agrees to indemnify, save and hold harmless, and defend City, its officers, agents and employees from and against all liens, charges, claims, demands, losses, costs, judgments, liabilities, and damages of every kind and nature whatsoever, including court costs and attorney's fees arising by reason of: the performance by PPC of any services under this Agreement; any act, error or omission of PPC or of any agent, employee, licensee, invitee, contractor, subcontractor, or volunteer of PPC; and any breach by PPC of any of the terms conditions or provisions of this Agreement.
- 20.RIGHT TO INSPECT; RIGHT TO TAKE EMERGENCY ACTION: City shall have the right to enter the Project Site at all times for the purposes of inspecting the same or determining whether PPC and/or its subcontractors are complying with the terms and conditions hereof. City shall have the right (but not the duty) to enter the Project Site without the consent of PPC at any time to correct any situation which, in the reasonable discretion of City, is deemed to be of an emergency nature.
- 21. NON-OBLIGATION OF CITY TO REPAIR. In the event of casualty to the Project Site, regardless of the amount of damage or destruction, City shall be under no obligation to repair and/or replace the improvements made to Cliffside Park or any portion thereof, except insofar as the parties may agree in a separate written agreement regarding the long-term maintenance of Cliffside Park.
- 22. NON-OBLIGATION OF CITY TO REPAY ANY PRIVATE MONIES OR GRANTS. In the event that this Agreement is terminated by City as permitted under this Agreement or the Cooperation Agreement, or in the event of bankruptcy of PPC, City shall not be obligated to repay any private monies obtained by PPC for improvements to the Project Sites.
- 23. <u>AUTHORIZING RESOLUTION:</u> This Agreement is entered into by CITY pursuant to Resolution No. 53 of 2014, effective Fig. 35, 2014.

- 24. <u>SURVIVAL OF PROVISIONS:</u> It is the intent of the parties that the provision set forth in Paragraphs 5 (Compliance with Laws) and 19 (Indemnity) shall survive the expiration of the term of this Agreement.
- 25. <u>RECLAMATION</u>: Upon completion of its work, PPC shall ensure that its agents, contractors and subcontractors restore, repair, replace, re-seed, or rebuild the Project Site and any surrounding areas disturbed by Cliffside Park to its visual and functional equivalent immediately prior to the work. Such restoration, repair, replacement, re-seeding, or rebuilding shall be performed in accordance with prior plans and specifications approved in writing by CITY prior to the commencement of the reclamation. Such reclamation shall be completed within sixty (60) days after the completion of Cliffside Park.
- 26. NO NAMING RIGHTS: No naming rights or sponsorship designations may be promised or conferred by the PPC for Cliffside Park or any portion thereof without prior written permission from the City.

REST OF PAGE INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year first above written.

| Witness: | City of Pittsburgh |
|------------------------------------|--|
| Jaurie Wakes Witness: | By: William Peduto, Mayor |
| • | City of Pittsburgh Department of Parks and Recreation |
| Allin Hilwon Witness: | By: Acting Director, I Jim Griffin |
| | City of Pittsburgh Department of Public Works |
| Witness: | By: Michael A. Gable Director, Michael A. Gable |
| | Pittsburgh Parks Conservancy |
| Witness: | By: Yung M. Quest- President & CEO, Mary M. Cheever |
| Examined: Associate | e Gity Sollejtor |
| Approved as to form by: City Solid | Silver Bazan He Const City Co |
| Countersigned by: City Con | hallfann 5-29-14 5-22-14 |

EXHIBIT A PROJECT SITE DESCRIPTION, PLANS, and SCOPE OF WORK

Project Description:

PPC has conferred with the City concerning its plans, and has provided the City with engineering drawings and construction plans for the Project Site. This project will renovate Cliffside Park in the Hill District (see location map below).

Pittsburgh Parks Conservancy Scope of Work:

- Create an accessible entrance and pathways.
- Enhance views through vegetation management (as funds allow).
- Improve site grading and stormwater infiltration.
- Install an accessible play area.
- Install drinking fountain provided by City.
- Construct a half-court for basketball with sports lighting.
- Install park signs and permanent interpretive elements (as funds allow). All signage is subject to prior review and approval by City, including the Art Commission, as applicable.
- Plant trees, shrubs, and ground covers.
- Provide two years of maintenance (tree and seasonal flower plantings, pruning, slope overgrowth, removal of invasive species, and trash picking) after completion of the Project improvements (supplemental to City services), including support of volunteer stewardship activities.
- Install lighting, including pulling wire through conduits and installing light poles and fixtures.

City of Pittsburgh, Department of Public Works, Scope of Work

- Enter into any agreements as needed regarding site utilities related to water, electric and gas, subject to necessary City Council authorization.
- Remove dead and dying trees, subject to the agreement of the City Forester as to condition.
- Salvage Belgian block, play equipment and other materials as desired.
- Provide and install City-standard benches, picnic tables, waste receptacles, bollards, and bicycle racks.
- Provide drinking fountain.
- Install one basketball backboard and net.
- Provide ongoing basic maintenance services, including regular mowing, trash
 pickup and removal, tree pruning, and hazardous tree removal. Carry out long
 term preventive maintenance and repairs, including path repaving, basketball
 court resurfacing, and maintenance of steel structures and fencing subject to
 the discretion of the Director of the Department of Public Works and available
 funds.

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/6/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 2/24/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(les) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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| PRODUCER | CONTACY Donna Sebesta | | | | | |
| Simpson & McCrady LLC | PHONE (AIC, No. Ext): (412) 261-2222 (AIC, No.: (412) 2 | 61-3437 | | | | |
| 310-330 Grant Street | ADDRESS: donna@simpson-mccrady.com | | | | | |
| Suite 1320 | insurer(s) affording coverage | NAIC # | | | | |
| Pittsburgh PA 15219 | INSURERA: Selective Way Ins. Co. | 26301 | | | | |
| MSURED . | INSURER a : Highmark Life & Casualty Group | | | | | |
| Pittsburgh Parks Conservancy | INSURER C: | | | | | |
| 2000 Technology Drive | INSURER D: | | | | | |
| Suite 200 | INSURER E: | | | | | |
| Pittsburgh PA 15219 | ENSURER F: | | | | | |
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THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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| CERTIFICATE HOLDER | CANCELLATION |
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| City of Pittsburgh | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| | AUTHORIZED REPRESENTATIVE |
| 1 | Donna Sebesta/DONNA Donna Sebesta |